

Nicole Freeling  
8631 Sierra Ridge Dr. Apt. F  
Indianapolis, IN 46239  
317-500-8757  
Plaintiff in Pro Se

**FILED**  
MAR 21 2023  
U.S. CLERK'S OFFICE  
INDIANAPOLIS, INDIANA

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

NICOLE FREELING,

Plaintiff,

vs.

INDIANA DEPARTMENT OF  
TRANSPORTATION, JOHN LEMING,  
in his individual and official capacity  
AND CRYSTAL M. WEAVER, in her  
individual and official capacity

Defendant.

Case No.: 1:23-cv-00278-TWP-MJD  
**SECOND AMENDED COMPLAINT  
FOR VIOLATIONS OF:**

**(1) 42 U.S.C SECTION 1983  
(2) 14<sup>th</sup> AMENDMENT THE  
EQUAL PROTECTION  
CLAUSE AND DUE  
PROCESS OF LAW**

**NATURE OF THE CLAIMS**

1. This is a civil rights action under 42 U.S.C. § 1983 and the Fourteenth

Amendments to the United States Constitution, brought to remedy a violation of the Plaintiff NICOLE FREELING Constitution and Private rights by unequal treatment and depriving Plaintiff of life, liberty, or property without due process of laws.

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over the subject matter and parties pursuant to 28 U.S.C. §§ 1331 and 1343 as this case involves questions of federal law.

3. Venue is proper in, and Defendants are subject to the personal jurisdiction of, this Court because Defendant maintain facilities and business operations in the district, and all or most of the events giving rise to this action occurred in this District. 28 U.S.C. § 1391.

### **PARTIES**

4. Plaintiff Nicole Freeling is an African American Woman, a resident of Indianapolis, Indiana, and a citizen of the US. Plaintiff has been licensed as real estate broker since 2014. Plaintiff is a WOSB certified with the State of Indiana.

5. Upon information and belief, Defendants INDIANA DEPARTMENT OF TRANSPORTATION also known as INDOT is a government agency located in the Indianapolis Indiana. INDOT is likewise responsible for implementation and application of the policy for INDOT Real Estate Division.

6. Defendant JOHN LEMING, in his individual and official capacity as

1 INDOT Consultant Prequalification Research Analyst. Defendant is  
 2 responsible for the prequalification application process and enforcing of  
 3 policy for INDOT Real Estate Division.

- 4
- 5 7. Defendant CRYSTAL M. WEAVER, in her individual and official  
 6 capacity as INDOT Prequalification Engineer and manager over  
 7 Defendant John Leming. Defendant Crystal Weaver is responsible for  
 8 the prequalification application process and enforcing of policy for  
 9 INDOT Real Estate Division.

10

11

12 **FACTUAL ALLEGATIONS**  
 13 **(Before requested FOIA Records)**

- 14
- 15 8. Plaintiff contacted the Indiana Department of Transportation in  
 16 September 2021 after learning about becoming a Consultants with their  
 17 Real Estate Division.

- 18
- 19 9. In September 2021 Plaintiff was directed to John Leming for the  
 20 prequalification process. At this time Plaintiff had the initial phone and  
 21 email conversations with Defendant about her real estate experience and  
 22 background. John Leming informed Plaintiff that she would have to pass  
 23 the INDOT real estate exam before becoming prequalified and directed  
 24 Plaintiff to Todd Clift whose title was Support, Property Management,  
 25 Relocation & LPA. (See Exhibit 1)

- 26
- 27 10. October 21<sup>st</sup>, 2021, Plaintiff had a conversation with Todd Clift about  
 28 her real estate experience in the private sector. This is when Plaintiff

1 learned about Relocation. Todd Clift connected Plaintiff to Keshia  
2 Lewis who administers the Relocation and Julie Foreman who  
3 administers the Buyer exam. Plaintiff decides to go for Relocation.  
4 Plaintiff receives email of all necessary materials that was required to  
5 help study and pass the exam also a real estate manual different from the  
6 Defendants 12.8 Manual. (See Exhibit 2)

7  
8 11. March 10<sup>th</sup>, 2022, Plaintiff had the first exam and failed. Keshia Lewis  
9 explained the test is designed for consultants to fail on first try because  
10 of the training sessions that take place right after to give Consultants  
11 hands on training.

12  
13 12. April 21<sup>st</sup>, 2022, Plaintiff had taken the exam for the second time and  
14 failed. Shortly after this exam Plaintiff had another 3–4-hour training  
15 session with Ms. Keisha Lewis.

16  
17 13. June 16<sup>th</sup>, 2022, Plaintiff's third time taking the Relocation exam.  
18 This time the Plaintiff passed the exam. Plaintiff has gained knowledge  
19 of the Uniform Act and 49 CFR, PART 24. Plaintiff was informed by  
20 Keisha Lewis that she would send over the confirmation letter to the  
21 Plaintiff, and she would also notify the prequalification department that  
22 Plaintiff passed the exam. Keshia Lewis also instructed Plaintiff to reach  
23 back out to the prequalification department to complete the application  
24 process. (See Exhibit 3)

25  
26 14. Toward the end of June 2022, Plaintiff made phone call to John  
27 Leming in prequalification's. At this Plaintiff informed the Defendant  
28

1 that she had passed the Relocation exam. Plaintiff never told defendant  
2 she passed both Relocation and Buyer exam only the Relocation.

3  
4 15. On the same call with Defendant John Leming, Plaintiff ask for help  
5 completing the application process. Plaintiff asked Defendant how to  
6 operate the ITAP portal system correctly. Defendant was not helpful  
7 when replying on how to navigate putting information into application's  
8 system.

9  
10 16. Approximately the first week of July 2022, Plaintiff made another  
11 phone call to the Defendant John Leming. Plaintiff asked Defendant if  
12 her application was done correctly. Defendant says, "he's working on  
13 eighteen other applications before he can get to Plaintiffs', and it will be  
14 about another three weeks".

15  
16 17. June 25<sup>th</sup>, 2022, Plaintiff reached out to the Defendant John Leming  
17 to check the progress of the application. This time John Leming  
18 informed Plaintiff that she needs to update her insurance policy. On this  
19 day the Defendant never mentioned anything else concerning the  
20 application.

21  
22 18. On August 2<sup>nd</sup>, 2022, Plaintiff sent over insurance policy to John  
23 Leming through email and he did not respond to Plaintiffs' email. That  
24 morning Plaintiff received a LinkedIn notification that her profile had  
25 been viewed by Defendant John Leming.

26  
27 19. On August 3<sup>rd</sup> around 9:42 AM. Plaintiff sent another email to  
28 Defendant John Leming asking if he'd received the insurance certificate

1 sent the day before, Defendant never replied to that email. However  
2 around 9:55AM Plaintiff did receive an email from Defendant John  
3 Leming stating that her application has been denied because Plaintiff did  
4 not list any projects in the 12.8 of the manual which he states is a  
5 requirement for the Relocation work type.

6  
7 20. Plaintiff made phone call to Defendant John Leming around 10:12  
8 AM to gain clarity on why her application was denied and where in the  
9 Manual is this listed? On this call Defendant told Plaintiff she was  
10 denied because “explaining complex highway right away and  
11 constructions plans is necessary.” He stated this is the way they’ve  
12 always done it going strictly by their manual, and these are the  
13 procedures they have always followed therefore Plaintiff does not meet  
14 the requirement in the 12.8 Manual. Plaintiff has reason to believe that  
15 defendant falsified this information because other Relocation  
16 Consultants are not responsible for explaining complex highway right  
17 away and constructions plans. The current Relocation agents did not  
18 require that knowledge to obtain approval for prequalification. During  
19 the call Defendant stresses that Plaintiff does meet the appropriate  
20 experience for the 12.8 work type. However, Plaintiff has similar real  
21 estate background as other relocations agents who are White that the  
22 Defendants qualified. (See exhibit 4 thumb-drive)

23  
24 21. Plaintiff has reasons to believe Defendants has qualified White  
25 Relocation Consultants that has similar qualifications and background of  
26 private sector real-estate/small business and not working for a “large  
27 firm”. White Relocation Consultants were not profiled in this strict  
28

1 manner and held to these 12.8 Manual requirements that Defendants  
2 held Plaintiff to require.

3  
4 22. Defendant John Leming told Plaintiff to get a hold of the “girl” who  
5 helped with the test. Defendant was referring to Kiesha Lewis the  
6 Relocation supervisor an African American. I contacted Ms. Keisha  
7 Lewis and explained to her my application was denied. After she spoke  
8 to Defendant Leming, she advised me after she had spoken to John  
9 Lemeing all I needed to add were projects that I have completed in the  
10 private sector. Plaintiff updated the application by adding projects from  
11 her experience in her real estate career.

12  
13 23. On August 5<sup>th</sup>, 2022, Plaintiff received email from Defendant John  
14 Leming telling her “I have expedited your application and after  
15 discussing with Keisha Lewis and Crystal Weaver it was agreed that you  
16 do not possess the requisite experience for approval 12.8-Relocation.  
17 Therefore, your application has been denied.” Plaintiffs in shocked  
18 because she had done what both John Leming and Keisha Lewis referred  
19 her to do by updating the application and adding three projects that she  
20 previously worked in the real estate industry.

21  
22 24. Same day August the 5th around 8:54 AM Plaintiff called Defendant  
23 John Leming on the phone and asked the Defendant why she is being  
24 denied for the second time. Again, the Defendant iterates that Plaintiff  
25 does not meet the requirements for the Relocation work type. Defendant  
26 states he did not make this decision on his own, but he included the  
27 decision was decided also by his boss Crystal Weaver and Keisha Lewis.

1           25. During the phone call Defendant John Leming told Plaintiff “that in  
2           the Relocation work she would be in situations applying CFR 49 PART  
3           24 by working on a roadway project where Plaintiff would have to read  
4           blueprints”. This is contradicting to what the Plaintiff was trained on and  
5           what she studied for the exam. Defendant told Plaintiff that she would  
6           not have any support from INDOT. Defendant states that he has denied  
7           “individuals” like the Plaintiff in the past. Defendant becomes  
8           combative toward Plaintiff during this call. Plaintiff asked several times  
9           has everyone else met all those requirements to get approved in  
10          Relocation that the Defendants are adamant the Plaintiff must possess.  
11          Defendant says “Yes, out of my 15 years of working prequalification’s  
12          everyone he has approved has met all those requirements”. (See exhibit  
13          5 thumb-drive)

14  
15          26. Same morning of August 5<sup>th</sup>, 2022, Plaintiff reaches out by phone to  
16          Defendant Crystal Weaver the boss of Defendant John Leming.  
17          Defendant Crystal Weaver told Plaintiff that she was denied because of  
18          “lack of experience as far as federal code of regulation”. Defendant  
19          said, “they take a look at everybody experience and make sure everyone  
20          has a certain amount of experience before they can be qualified”. Crystal  
21          Weaver was very clear they are following the “Manual” for the  
22          approvals. Plaintiff asked the Defendant the same question she asked  
23          Defendant John Leming, if other agents met all those requirements by  
24          previously working on highway projects, working with firms, and  
25          reading blueprints to get approved in Relocation, which is what both  
26          Defendants are adamant the Plaintiff must possess. Defendant Crystal  
27          Weaver also answered Yes. She states they try to maintain consistency  
28          in meeting those requirements. (See exhibit 6 thumb-drive)



1  
2 27. August 9<sup>th</sup>, 2022, Plaintiff contacted via phone Keisha Lewis.  
3 Plaintiff was told by Ms. Lewis that they went over her head with the  
4 decision. She informed Plaintiff that they want her to have more hands-  
5 on experience and she would like to connect Plaintiff to current  
6 Relocation Consultants. Keisha speaks about a company that is a small  
7 ma and pop company not a “big firm”, working for themselves, and  
8 Plaintiff would be able to get a “parcel” hand on experience. The small  
9 company is Boomerang Ventures, LLC and is owned by a Caucasian  
10 couple Ande and Joe Gromosky. During this call Keisha Lewis disclosed  
11 that all Relocation Consultants are White, she says there is no diversity.  
12 (See thumb-drive 6a)  
13

14 28. September 14, 2022, Plaintiff met with one of INDOT’S Relocation  
15 Consultants Ande Gromosky for lunch. Ande tells Plaintiff that she and  
16 her husband got into this position because she was a realtor prior, and  
17 Todd Clift informed them about the opportunity in INDOT’S  
18 Relocation. Coming into this position they did not have any INDOT  
19 Right Away experience and they had learned by asking other agents  
20 questions. She also told Plaintiff that it doesn’t make sense that  
21 Defendants did not qualify her after passing the exam and the only way  
22 to get the “experience” would be if INDOT provided the work of a  
23 “parcel”. She made it clear that they are not reading road maps nor  
24 blueprints. She shows Plaintiff how they looked for comparable  
25 properties on the MLS and how to get the reports to Keshia Lewis. Most  
26 of the basics Ande covered in the scope of Relocation work is exactly  
27 what the Plaintiff is experience in as a real estate broker and, also what  
28 Plaintiff learned from the exams and training with Keisha Lewis. Ande

1 says "it's hard for them to help train their competition referring to the  
2 Plaintiff".

3  
4 29. Plaintiff reached out to another Relocations Consultants with INDOT  
5 and had a phone call with Michael Kuehl who has been with INDOT for  
6 many years. Michael also made it clear that Plaintiff is "competition",  
7 and it would be strange to train her. Michael said the Relocation  
8 division is a very "niche". Michael stated that he is frustrated with  
9 INDOT for not prequalifying me after passing the exam which he states,  
10 "it's not an easy test to pass". Michael also says he's a little surprised  
11 that Plaintiff passed the test, and they are not approving prequalification.  
12 (See exhibit 7 thumb-drive)

### 13 **FACTUAL ALLEGATIONS**

14 **(After requested FOIA Records)**

15  
16  
17  
18 30. January 3<sup>rd</sup>, 2023, Plaintiff Nicole Freeling, made a public record  
19 pursuant to IC § 5-14-3 Indiana Code to the Indiana Department of  
20 Transportation. On February 20<sup>th</sup>, 2023, some of those records were  
21 released. Plaintiff requested all emails from Keisha Lewis, Defendants  
22 John Leming and Crystal Weaver discussing Plaintiff or Plaintiff's  
23 business. Plaintiff also requested records of all approved and denied  
24 prequalification applications from 2019-2022. (See exhibit 8)

25  
26 31. According to emails release from FIOA request. Defendant John  
27 Leming begin profiling Plaintiff Nicole Freeling months before the  
28 denial of the application. This started immediately after Plaintiff Nicole

1 made the phone call to the Defendant in late June to inform him about  
2 passing the Relocation exam and to get his assistance on how to  
3 complete the application.  
4

5 32. June 28<sup>th</sup>, 2022, Defendant John Leming sent an email to Todd Clift  
6 in the Real estate division. In the email Defendant has made a false  
7 statement about the Plaintiff. Defendant said Plaintiff told him that she  
8 passed both Relocation and Buyer exam. Plaintiff never said she passed  
9 both exams only told Mr. Leming that she passed the Relocation and  
10 told him that Keisha Lewis would send over the information needed  
11 from their department.  
12

13 33. According to the emails from the FIOA request on June 28<sup>th</sup>, 2022,  
14 Keisha Lewis responds to the emails that the Defendant is sending out  
15 with misleading information about what exam the Plaintiff had passed.  
16 In one of the emails Keisha Lewis is confirming that Plaintiff has passed  
17 the Relocation exam and she was going to get the Plaintiff added to their  
18 list so that Plaintiff could get prequalified.  
19

20 34. On June 29<sup>th</sup>, 2022, Defendant John Leming has emailed Keisha  
21 Lewis and continued to defame the Plaintiff's abilities and work ethics  
22 by using words such as "sketchy" to describe the Plaintiff's experience.  
23 Defendant continues to fabricate stating that the Plaintiff told him that  
24 she has "some INDOT" experience when Plaintiff never told John  
25 Leming nor any other INDOT employees that she has any experience  
26 with INDOT. Plaintiff was always upfront about the work she's done in  
27 real estate field.  
28

1           35. From the same email on this day of June 29<sup>th</sup>, 2022, the Defendant  
2           has now caused others such as Todd Clift to question the ability of the  
3           Plaintiff to perform as a relocation agent.

4  
5           36. The Defendant John Leming also raised his concerns that the Plaintiff  
6           passed the exam after the 3<sup>rd</sup> try. Defendant has never questioned the  
7           White relocation agents that has taken the exam 2-3 times before  
8           passing. Because in the email from June 29<sup>th</sup> Ms. Keisha Lewis explains  
9           to him that 95% of the Consultants have taken the exam 2-3 times. On  
10          this same email Keisha Lewis extensively explains to the Defendant the  
11          extensive training and knowledge the Plaintiff has gained with  
12          understanding the requirements, policies, and procedures of the Uniform  
13          Act CFR Part 24. She also makes it very clear to the Defendant that she  
14          would be there to assist her in the future just like she does with all the  
15          other Consultants that need assistance to perform their assignments. (See  
16          exhibits 9-9e)

17  
18          37. Defendant John Leming received an email from Keisha Lewis on  
19          August 3<sup>rd</sup>, 2022, at 11:39 AM (when the Plaintiff first application was  
20          denied) from this email Keisha Lewis is asking and raising her concerns  
21          about the Plaintiff denial. Keshia Lewis once again is explaining to the  
22          Defendant that the Plaintiff does possess skills to perform Relocation.  
23          She also states in her 8 years of working in Relocation she has seen  
24          serval agents who has taken the exam who did not have Relocation  
25          experience other than working in the Real Estate Industry private sector  
26          just like the Plaintiff. These other agents became pre-qualified without  
27          merit, she went as far as telling the Defendant she can provide him with  
28          their names if he needs them. (See exhibit 10)

1  
2 38. August 4<sup>th</sup>, 2022, Defendant was forwarded an email that the  
3 Plaintiff sent to Keisha Lewis to confirm her real estate broker license  
4 number. Because the Defendant had made a statement to Keisha Lewis  
5 that the Plaintiff's license number on the application was an "invalid"  
6 license number, and he was not able to confirm it. This is another false  
7 statement the Defendant John Leming has made concerning the Plaintiff.  
8 Plaintiff sent screenshot to Keisha Lewis of Plaintiff's Nicole Freeling  
9 real estate license showing correct and active status with the State of  
10 Indiana. (See exhibits 11& 11a)

11  
12 39. On August 9<sup>th</sup> 2022 emails between Keisha Lewis and Defendant  
13 John Leming. Keisha Lewis is trying to gain understanding from the  
14 Defendant on how long the Plaintiff Nicole Freeling needs this "hands  
15 on experience". Defendants replies that his concerns are the Plaintiff  
16 "limited experience" he is criticizing the Plaintiff abilities once again  
17 with comments about the Plaintiff making statements saying, "hold her  
18 hand", "consistently reviewing or redoing her work". He goes on to state  
19 another main concern of his is that the Plaintiff's ability to read and  
20 interpret, explain complex highway and construction plans, or that she  
21 posses a thorough knowledge of 49 CFR, Part 24.

22  
23 40. On the same email Keisha Lewis responds letting the Defendant  
24 know again that all Relocation agents, despite their knowledge of 49  
25 CFR, part 24, all their paperwork must come to her desk for review. She  
26 goes on explaining to the Defendant John Leming how she answers their  
27 questions daily. She says they all have issues with their parcels or  
28 questions regards to handling their job. She goes even farther in this



1 email highlighting what the Defendant is stating “his main concern to  
 2 read, interpret, explain complex highway right of way and construction  
 3 plans” DOES NOT APPLY TOWARDS RELOCATION. Keisha Lewis  
 4 tells the defendant that if this is his reasons for denying the Plaintiff  
 5 Nicole Freeling application, then his concerns are invalid and does apply  
 6 to Relocation.

7  
 8 41. The Defendant responded to Keisha Lewis email stating “Ok, well  
 9 look, I can go with whatever you decide”. He goes on stating more of his  
 10 concerns, the work type requirements in the Manual and if this not a  
 11 requirement it needs to be address in the next revision. Defendants never  
 12 communicated this to the Plaintiff or informed the Plaintiff this is not a  
 13 requirement for relocation after receiving this information. Defendants  
 14 should have known this defect in their policy because he is the one who  
 15 qualifies all other Relocation agents. Keisha Lewis tells Defendant that  
 16 if that requirement is in the Manual, then it needs to be address. She asks  
 17 him to send it to her so they can remove it from the Manual. After  
 18 Keisha Lewis see’s the Manuel 12.8 she tells the Defendant that “this  
 19 most definitely needs to update to reflect that those reading  
 20 /interpretation/ understanding is not required for Relocation. While this  
 21 information is discovered no one from the Indiana Department of  
 22 Transportation informed Plaintiff Nicole Freeling of these mistakes in  
 23 their Manual which is their reason for the Plaintiff’s denial.

24  
 25 42. August 10<sup>th</sup>, 2022, Defendant John Leming is responding to Keshia  
 26 Lewis about the Manual telling her that “they never make minor  
 27 adjustments to the Manual he tells her how he has been in this position  
 28 for 14 years and only seen 1 major revision which happened in 2018.

1 Keisha responds stating it's interesting what you said about the manual  
2 because for the last 2 years we have been able to make changes to the  
3 manual".

4  
5 43. August 29<sup>th</sup>, 2022, 12:06 PM Defendant John Leming received email  
6 from Keisha Lewis telling Defendant "I spoke with Tom, and we need  
7 some clarification in regards to what year this Real Estate Manual was  
8 printed for this particular 12.8 Relocation" Defendant replies the only  
9 changes he was aware of was 12.4. Which is Apprising not Relocation.  
10 (Plaintiff received remaining email responses pertaining to this email.  
11 Plaintiff is still waiting on requested FOIA- missing emails from  
12 INDOT'S records department.) (See exhibits 12-12f) (See exhibits 13-  
13 13e)

14  
15  
16 44. Plaintiff has reason to believe that there is a disparity among African  
17 Americans getting selected and prequalified for the Real Estate Division  
18 opportunities with Indiana Department of Transportation. Plaintiff  
19 requested FOIA records from their department to show what applicants  
20 were approved for these opportunities and what applicants are getting  
21 denied from 2019-2022. The information the Plaintiff received was not  
22 what she requested; however, they sent over a small list of Disadvantage  
23 Business Enterprise (DBE) approval list with 17 companies a mixture of  
24 real estate niches. Out of the 17 the Plaintiff researched only 1 out of the  
25 17 on that list may have been African American owned the rest were all  
26 White or other ethnicities owned businesses. INDOT'S real estate  
27 division has a disparate impact on African Americans. (See Exhibit)

1 (Plaintiff is still waiting on this requested missing application data from  
2 INDOT'S records department.) (See exhibit 14)

3  
4 **(INDOT'S REAL ESTATE MANUAL POLICY)**  
5 **(FACTUAL ALLIGATIONS)**  
6  
7

8 45. Defendants used their Manual to deprive Plaintiff of her civil rights by  
9 using part of the manual to disqualify Plaintiff for requirements that  
10 were not required by White Relocation Agents.

11  
12 46. Defendants used the Manual to give false statements to the Plaintiff  
13 by telling her "Everyone else in Relocation has met all those  
14 requirements before getting approved."

15  
16 47. Plaintiff was held at higher standard using the Manual 12.8. The  
17 standards that Plaintiff was held to was not a requirement for Relocation.

18  
19 48. Defendants used the Manual for pretext and knew or should have  
20 known the real requirements for Relocation.

21  
22 49. The Defendants belittled and undervalued the Plaintiff by telling her  
23 what she did not know regardless of the Plaintiff's past training and  
24 passing Relocation exam.

25  
26 50. Defendants never converse with the Real Estate department to ask  
27 what is required for all Relocation agents to make sure Plaintiff was  
28



1 getting treated with a fair reason. Defendants used the Manual to force  
2 their customs to single out the Plaintiff for denial.

3  
4 51. Defendants never acted in good faith to contact the Plaintiff and  
5 explain the mistakes and misleading information that is in the 12.8  
6 Manual that they used to cause the denial of her application.

7  
8 52. Defendants intentionally concealed this material fact about the  
9 Manual's wrong qualifications listed for 12.8 Relocation after the  
10 Plaintiff's denial. In spite of having the correct information about the  
11 real Relocation qualifications Defendants still knowingly disregards the  
12 Plaintiffs rights and safety to know the truth.

13  
14 53. Defendants knew or should have known about the different Manuals  
15 stating different requirements with different qualifications for  
16 Relocation. (See exhibit 15 & 16)

### 17 18 **FIRST CAUSES OF ACTION**

#### 19 **Violation of Civil Rights Under the Fourteenth Amendment**

#### 20 **Equal Protection based on Race Discrimination**

21 **(42 U.S.C. § 1983)**

22  
23 54. Plaintiff here by repeats and realleges the allegations in each of the  
24 preceding paragraphs as if fully set forth herein.

25  
26 55. The Equal Protection Clause of the Fourteenth Amendment requires  
27 that the government treat similarly situated persons alike.  
28

1        56. At all times complained herein the Defendants were acting under the  
2        color of law, pursuant to their authority as prequalification decision  
3        makers, and were acting in the course of their employment with the  
4        Indiana Department of Transportation.

5  
6        57. The Defendants violated the Plaintiff's right of equal protection,  
7        subjecting Plaintiff to discrimination by denial of the application for  
8        Relocation Consultant after Plaintiff was deemed qualified through  
9        passing the exam and trained by the Relocation Supervisor Keisha  
10       Lewis. Similarly situated Relocation agents who are White were able to  
11       be approved after passing the exam. Some of these similarly situated  
12       agents were not expected to have nor meet the high bar standard that was  
13       used to deprive the Plaintiff from equal protection. Defendants went as  
14       far to devalue her name and her ability to perform the work.

15  
16       58. The reasons for Plaintiff's denial stated by the Defendants were  
17       "Plaintiff does not meet all the Manual requirements particularly in  
18       reading, interpret, explaining highway right of way and construction  
19       plans". Defendants has not held these "required standards" for White  
20       Relocation similarly situated agents with same qualifications as the  
21       Plaintiff. Therefore, the Plaintiff has not been equally protected.

22  
23       59. Defendants acting under the color of law concealed material facts and  
24       made false statements to deprive Plaintiff's Civil Rights by providing  
25       misleading information to the Plaintiff such as all the previous  
26       Relocation agents possess all the Manual's 12.8 CFR Part 24  
27       qualifications requirements.  
28

1  
2 60. Pursuant to its 12.8 Relocation Manual policy and practices, what the  
3 Defendants is using to intentionally discriminate against the Plaintiff.  
4 Defendants are treating Plaintiff differently than other similarly situated  
5 Relocation agents on the basis of Plaintiffs race, a protected  
6 classification.

7  
8 61. Defendant's knowledge of 12.8 Relocation policy should have been  
9 known what and what is not required for this work type. Defendants  
10 never acted in good faith to correct any misleading information relayed  
11 to the Plaintiff about the requirements they told her she "must have" and  
12 later this was revealed these are not requirements needed for Relocation  
13 and never has been. They never contacted or informed Plaintiff about  
14 any deficiencies in their Relocation policy weeks after the denial by the  
15 Defendants.

16  
17 62. When government regulations, like the Indiana Department of  
18 Transportation policy and practices challenged herein, infringe on such  
19 fundamental rights, discriminatory intent presumed.

20  
21 63. Defendant's 12.8 Relocation Manual policy and practice have also  
22 been applied to intentionally discriminate against the Plaintiff's rights of  
23 equal protection under the laws.

24  
25 64. Defendants lack a rational or compelling state interest for such  
26 disparate treatment of Nicole the Plaintiff. But for the Plaintiff race  
27 (African American) the application would have not been denied because  
28

1 White similarly situated agents' applications were approved with similar  
2 experience and credentials as the Plaintiff.

3  
4 65. Defendant's discrimination against Nicole the Plaintiff is not  
5 narrowly tailored to serve a compelling state interest.

6  
7 66. Accordingly, Defendant's 12.8 Relocation Manual Policy and  
8 practice of prohibiting Nicole the Plaintiff from working as a Relocation  
9 Consultant with INDOT, she was treated unfairly in the application  
10 process requiring to possess more requirements and experience that  
11 similarly situated agents did not need to possess. This violates Nicole the  
12 Plaintiff's' right to equal protection of the law as guaranteed by the  
13 Fourteenth Amendment to the United States Constitution.

14  
15 67. As a direct result of the intentionally discrimination preformed by the  
16 Defendants, Plaintiff has suffered with economic and emotional injuries.  
17 Plaintiff is entitled to all legal and equitable remedies available under  
18 §1983.

19  
20 **SECOND CAUSES OF ACTION**

21 **Violation of Civil Rights Under the Fourteenth Amendment**

22 **The Due Process Clause**

23 **(42 U.S.C. § 1983)**

24  
25  
26 68. Plaintiff here by repeats and realleges the allegations in each of the  
27 preceding paragraphs as if fully set forth herein.  
28

1           69. The Due Process of the Fourteenth Amendment prohibits the  
2           government from depriving any person of life, liberty, or property  
3           without due process of law”.

4  
5           70. Plaintiff rights has been deprived when Defendants impleaded 12.8  
6           Relocation policy requirements that were not legitimate requirements for  
7           the Relocations agents.

8  
9           71. Defendants acting under the color of law concealed material facts  
10          about the Manual used to deny Plaintiff application and, made false  
11          statements to deprive Plaintiff’s Civil Rights by providing misleading  
12          information.

13  
14          72. Plaintiff did not get the same privileges as other similarly situated  
15          agents because they were approved without having those same heighten  
16          requirements and did not go through strict profiling or evaluation like  
17          the Plaintiff.

18  
19          73. Before the deprivation of life, liberty or property of Nicole Freeling  
20          the Plaintiff, Defendants did not give a proper notice and opportunity for  
21          the Plaintiff to be heard through the Due Process of Law.

22  
23          74. Plaintiff had a legitimate claim to become a Relocation agent because  
24          Plaintiff was trained and successfully passed the Relocation exam and  
25          posses a Real Estate Broker license which are the only requirements for  
26          other agents.

1       75. Defendants lack a rational or compelling state interest for such  
2       disparate treatment of Nicole the Plaintiff and the reason being was false  
3       and misleading. But for the Plaintiff race (African American) the  
4       application would have not been denied because White similarly situated  
5       agent's applications were approved with similar experience and  
6       credentials as the Plaintiff.

7  
8       76. Defendants did not sufficient justification for infringing Plaintiffs  
9       rights by invoking all the requirements of the 12.8 Manual Policy that  
10      led to the denial of Plaintiff's application for Relocation. Instead, the  
11      Defendants chose to discriminate and provide falsified information to  
12      deny the Plaintiff.

13  
14      77. The Defendants actions was not fair or reasonable toward the  
15      Plaintiff who is African- American. Data shows a disparate impact in  
16      INDOT'S Real estate division among African Americans.

17  
18      78. Accordingly, Defendant's 12.8 Relocation Manual Policy and  
19      practice of prohibiting Nicole the Plaintiff from working as a Relocation  
20      Consultant with INDOT, she was deprived of liberty and property to  
21      have the same enjoyment of life through opportunities and contracts as  
22      similarly situated agents. This violates Nicole the Plaintiff's' right to due  
23      process of the law as guaranteed by the Fourteenth Amendment to the  
24      United States Constitution.

25  
26      79. As a direct result of the intentionally discrimination performed by the  
27      Defendants, Plaintiff has suffered with economic and emotional injuries.  
28

1 Plaintiff is entitled to all legal and equitable remedies available under  
2 §1983.

3  
4 **JURY DEMAND**

5  
6 80. Plaintiffs request a trial by jury to the extent allowed by law.  
7

8  
9 **PRAYER FOR RELIEF**

10  
11 WHEREFORE, Plaintiff respectfully prays for relief as follows:  
12

- 13 A. For a declaration that Defendants' actions, and practice as alleged  
14 herein are unlawful and in violation of Section 1983, Fourteenth  
15 Amendment the Equal Protection Clause, and the Due Process Clause;  
16  
17 B. A permanent injunction against the Defendants from engaging in any  
18 further unlawful practices of discrimination by providing equal  
19 opportunities for African Americans;  
20  
21 C. An award of compensatory, nominal and punitive damages to the  
22 Plaintiff;  
23  
24 D. An award of litigation cost and expenses;  
25  
26 E. Pre-and post-judgement interest;  
27  
28 F. Such other and further relief as the Court may deem just and proper;



Respectfully submitted,  
NICOLE FREELING

Dated: March 21, 2023

By: 